

ANALYSIS OF AMENDED BILL

Author: Bowen Analyst: Deborah Barrett Bill Number: SB 1744
 Related Bills: See Legislative History Telephone: 845-4301 Amended Date: April 4, 2006
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT:

State Agencies That Provide Notice Of Breach Of Security Of System To California Resident Shall Offer To Pay Fees For Security Freeze On Credit Reports & Provide Notice To Office Of Privacy Protection

SUMMARY

This bill would require an agency to offer to pay for security freezes on taxpayer credit reports and inform the Office of Privacy Protection (OPP) of a breach of security of personal information.

SUMMARY OF AMENDMENTS

The April 4, 2006, amendments removed language requiring an agency that suffers a breach of security of a system to pay for a credit monitoring service for affected taxpayers for one year following the breach. The April 4, 2006, amendments would require agencies to offer to pay the fees charged to place a security freeze on a taxpayer's credit report. The amendments also would require an agency to provide a copy of the taxpayer's notice of a breach of security to the OPP.

The April 4, 2006, amendments revised requirements for credit reporting agencies related to responsiveness to security freeze requests that do not impact this department and are not discussed in this analysis. This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to provide relief to individuals whose personal information has been acquired through a breach of system security by an unauthorized person.

EFFECTIVE/OPERATIVE DATE

This bill would become effective on January 1, 2007, and operative as of that date.

POSITION

Pending.

Board Position:

_____ S _____ NA _____ NP
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Department Director

Date

S. Stanislaus

5/8/06

ANALYSIS

FEDERAL/STATE LAW

Current state law requires a state agency to notify a resident of California in the event their personal information has been acquired by an unauthorized person due to a breach of security of that agency's computer system. A "breach of the security of the system" is the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information; however, an employee or agent of an agency is authorized to acquire personal information to perform his or her work duties.

Current state law defines "personal information" as a person's first name or first initial and last name, in combination with one or more of the following data elements when either the name or the data elements are not encrypted: i) social security number; ii) driver's license number or California Identification Card number; or iii) account number, credit card number, or debit card number along with the required security code, access code, or password. Personal information does not include information that is legally made available to the general public from federal, state, or local government records.

Current state law requires notification to be made in the most expedient time possible and without unreasonable delay. If the agency maintains computerized data, but does not own the data, the agency must notify the owner or licensee of the information of the breach immediately following discovery. State law requires notification to be made by any of the following methods: written, electronic, or substitute notice.

Current state law allows any agency that maintains its own notification procedures to be in compliance. Persons must be notified in accordance with those procedures and those procedures must be consistent with the timing requirements of current law.

Current federal and state law provides that returns and tax information are confidential and may not be disclosed, unless authorized specifically by statute. Any FTB employee or member responsible for the improper disclosure of federal or state tax information is subject to criminal prosecution, fines, or both. Improper disclosure of federal tax information is punishable as a felony and improper disclosure of state tax information is punishable as a misdemeanor.

THIS BILL

This bill would require state agencies that suffer a breach of security of a system that contains personal data to offer to pay the fees associated with placing a security freeze on an affected California resident's credit report with each of the national credit reporting agencies. This bill would also require the following information to be included on a notice of breach of security sent to taxpayers:

- Date the agency provides the notice,
- Date or dates on which the breach of the security of the system occurred based on best information available to the agency, and
- The elements of personal information that were or are reasonably believed to have been acquired (provided that this does not preclude the agency from providing a uniform notice to all affected residents).

The bill would require an agency that sends a notice of the breach of security of the system to a California resident to also provide a copy of that notice to the Office of Privacy Protection.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The requirement for the department to provide OPP a copy of the notice sent to a California resident when a breach of the security occurs violates current disclosure laws. The department is prohibited from disclosing return information, such as names and addresses that would be on those notices, to other state agencies for non tax administration purposes. The author's staff has indicated the purpose of this amendment is only to inform OPP of security breaches so they will be prepared to discuss it with taxpayers if contacted. If the author revised the requirement to specify that a redacted sample of the notice sent to taxpayers upon each incident is provided to OPP, this would resolve the department's implementation concern and achieve the author's desired result.

LEGISLATIVE HISTORY

SB 852 (Bowen, 2005/2006) proposed to expand notification of breaches of security requirements to include breaches of computerized data in any format. This bill failed passage out of the Assembly Business and Professions Committee.

AB 700 (Simitian, Stat. 2002, Ch. 1054) requires a state agency to notify residents of California in the event their personal information has been acquired by an unauthorized person due to a breach of security of that agency's computer system.

SB 1279 (Bowen, 2003/2004) would have applied the notice requirements for computerized data that had been breached to security breaches for all types of data. This bill remained with the Assembly Business and Professions Committee.

FISCAL IMPACT

Implementing this bill would require the department to pay for the costs of placing a security freeze on a California resident's credit report with the major credit reporting agencies. By statute, this fee is limited to no more than \$10 per freeze. To place the freeze on the three major credit reporting agencies as required by this bill would total \$30 per taxpayer per incident. A single breach of security could involve a large number of taxpayers. An estimated cost to the department to implement this bill will be developed as the bill passes through the legislative process.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

LEGISLATIVE STAFF CONTACT

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